

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JUN 12 2012
DAVID J. MALAND, CLERK
BY
DEPUTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

UNITED STATES OF AMERICA

§

§

V.

§

5:08-CR-0026

§

CHARLES KEVIN CLAYTON

§

REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE

On June 12, 2012, the Court held a hearing on the Government's Petition to Revoke Supervised Release. The Government was represented by Assistant United States Attorney Denise Simpson. Defendant was represented by Jeff Harrelson.

CHARLES KEVIN CLAYTON ("Defendant") was sentenced on September 25, 2008, before the Honorable David Folsom of the Eastern District of Texas after pleading guilty to the offense of counterfeiting and forging obligations or securities of the United States. This offense carried a statutory maximum imprisonment term of 20 years. The guideline imprisonment range, based on a total offense level of 14 and a criminal history category of VI, was 37-46 months. Defendant was subsequently sentenced to 40 months imprisonment followed by a three (3) year term of supervised release subject to the standard conditions of release in addition to the following special conditions: the provision of financial information to the probation officer, drug testing and drug aftercare, and a \$100 special assessment. On August 27, 2010, Defendant completed his period of imprisonment and began service of the initial supervision term. Thereafter, the United States Probation Office filed a Petition to Revoke Supervised Release (ECF No. 23) and an Amended Petition to Revoke Supervised Release (ECF No. 26).

In its Amended Petition to revoke, the Government alleges Defendant violated the following conditions:

1) **Defendant shall not commit another federal, state or local crime.** Specifically, the Government alleges as follows. On May 21, 2011, Defendant allegedly committed the offenses of Evading Arrest/Detention with a Vehicle, Aggravated Assault Against a Public Servant, and Forgery of a Financial Instrument. Defendant is being held in the Bi-State Detention Center with a bond set at \$20,000.00. The case is pending in Bowie County District Court.

2) **Defendant shall not commit another federal, state or local crime.** Specifically, the Government alleges as follows. On June 2, 2011, the Defendant was indicted by the United States Grand Jury in the Eastern District of Texas under Docket Number 5:11cr10 on charges related to the arrest noted in Allegation 1. Defendant was charged with Uttering Counterfeit Obligations and Securities and 2 counts of Possession of Counterfeit Obligations and Securities. Defendant was arrested for this indictment on June 6, 2011, and is currently incarcerated in the B-State Detention Center in Texarkana, Texas. As of the date of the petition, the case was pending in the Eastern District of Texas.

The Court scheduled a revocation hearing February 29, 2012. At the hearing, before the Hon. David Folsom, U.S. District Judge, Defendant pled true to the first allegation, with the exception he did not plead true to "Aggravated Assault Against a Public Servant." The Government abandoned that allegation at the sentencing hearing on June 12, 2012. The Defendant also pled true to the second allegation in the Amended Petition. Based upon Defendant's plea of true to the allegations, the Court found Defendant did violate his conditions of supervised release as alleged in the U.S. Probation Office's petition. The matter was deferred for sentencing.

On June 12, 2012, a hearing was held before the undersigned regarding the imposition of sentence for the foregoing violation of supervised release. The United States Sentencing Guidelines

recommend a sentence range of 21-24 months incarceration. At this hearing, the Defendant, through counsel, presented his Motion for Downward Departure based on diminished capacity. ECF No. 32. The Government responded to the Motion. ECF No. 33. The Court found the Motion for Downward Departure should be denied.

The Defendant was also allowed an opportunity to address the Court. Defendant indicated his remorse for his conduct and apologized to the Court and community.

The Government indicated it intended to seek a consecutive sentence with this case and with criminal case, *USA v. Clayton*, No. 5:11CR10, which is currently pending sentencing before this Court as well. As no sentence has yet been entered in that case, the issue of a consecutive or concurrent sentence is not yet properly before the Court.

Accordingly, the Court finds the Defendant should be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twenty-one (21) months, with no term of supervised release to follow said term of imprisonment. Based on the foregoing, it is

RECOMMENDED that Defendant's plea of true to the allegations of the Amended Petition (excepting the allegation of "Aggravated Assault Against a Public Servant" which has been withdrawn by the Government) be **ACCEPTED**. It is further

RECOMMENDED that Defendant's supervised release be **REVOKED**. It is further

RECOMMENDED that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twenty-one (21) months, with no term of supervised release to follow said term of imprisonment.

The parties were informed of the right to file objections to the recommendations as set forth above. The parties waived their objections. However, the Defendant specifically reserved his right

to raise the issue of diminished capacity at the sentencing hearing in *USA v. Clayton*, No. 5:11CR10.

Defendant was also advised that he has the right to be present with counsel, to speak on his own behalf, and to have counsel speak on his behalf before any additional sentence is imposed by the District Judge.

IT IS SO ORDERED AND ADJUDGED this 12th day of June 2012.



HON. BARRY A. BRYANT
U. S. MAGISTRATE JUDGE